



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5683

Introduced 2/16/2012, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-108.5

Amends the Public Utilities Act. Provides that if a participating utility that is a combination utility does not achieve one of its annual performance goals, then the utility shall no longer be eligible to annually update the performance-based formula rate tariff. Effective immediately.

LRB097 20550 CEL 66136 b

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-108.5 as follows:

6 (220 ILCS 5/16-108.5)

7 Sec. 16-108.5. Infrastructure investment and
8 modernization; regulatory reform.

9 (a) (Blank).

10 (b) For purposes of this Section, "participating utility"
11 means an electric utility or a combination utility serving more
12 than 1,000,000 customers in Illinois that voluntarily elects
13 and commits to undertake (i) the infrastructure investment
14 program consisting of the commitments and obligations
15 described in this subsection (b) and (ii) the customer
16 assistance program consisting of the commitments and
17 obligations described in subsection (b-10) of this Section,
18 notwithstanding any other provisions of this Act and without
19 obtaining any approvals from the Commission or any other agency
20 other than as set forth in this Section, regardless of whether
21 any such approval would otherwise be required. "Combination
22 utility" means a utility that, as of January 1, 2011, provided
23 electric service to at least one million retail customers in

1 Illinois and gas service to at least 500,000 retail customers
2 in Illinois. A participating utility shall recover the
3 expenditures made under the infrastructure investment program
4 through the ratemaking process, including, but not limited to,
5 the performance-based formula rate and process set forth in
6 this Section.

7 During the infrastructure investment program's peak
8 program year, a participating utility other than a combination
9 utility shall create 2,000 full-time equivalent jobs in
10 Illinois, and a participating utility that is a combination
11 utility shall create 450 full-time equivalent jobs in Illinois
12 related to the provision of electric service. These jobs shall
13 include direct jobs, contractor positions, and induced jobs,
14 but shall not include any portion of a job commitment, not
15 specifically contingent on an amendatory Act of the 97th
16 General Assembly becoming law, between a participating utility
17 and a labor union that existed on the effective date of this
18 amendatory Act of the 97th General Assembly and that has not
19 yet been fulfilled. A portion of the full-time equivalent jobs
20 created by each participating utility shall include
21 incremental personnel hired subsequent to the effective date of
22 this amendatory Act of the 97th General Assembly. For purposes
23 of this Section, "peak program year" means the consecutive
24 12-month period with the highest number of full-time equivalent
25 jobs that occurs between the beginning of investment year 2 and
26 the end of investment year 4.

1 A participating utility shall meet one of the following
2 commitments, as applicable:

3 (1) Beginning no later than 180 days after a
4 participating utility other than a combination utility
5 files a performance-based formula rate tariff pursuant to
6 subsection (c) of this Section, or, beginning no later than
7 January 1, 2012 if such utility files such
8 performance-based formula rate tariff within 14 days of the
9 effective date of this amendatory Act of the 97th General
10 Assembly, the participating utility shall, except as
11 provided in subsection (b-5):

12 (A) over a 5-year period, invest an estimated
13 \$1,300,000,000 in electric system upgrades,
14 modernization projects, and training facilities,
15 including, but not limited to:

16 (i) distribution infrastructure improvements
17 totaling an estimated \$1,000,000,000, including
18 underground residential distribution cable
19 injection and replacement and mainline cable
20 system refurbishment and replacement projects;

21 (ii) training facility construction or upgrade
22 projects totaling an estimated \$10,000,000,
23 provided that, at a minimum, one such facility
24 shall be located in a municipality having a
25 population of more than 2 million residents and one
26 such facility shall be located in a municipality

1 having a population of more than 150,000 residents
2 but fewer than 170,000 residents; any such new
3 facility located in a municipality having a
4 population of more than 2 million residents must be
5 designed for the purpose of obtaining, and the
6 owner of the facility shall apply for,
7 certification under the United States Green
8 Building Council's Leadership in Energy Efficiency
9 Design Green Building Rating System;

10 (iii) wood pole inspection, treatment, and
11 replacement programs;

12 (iv) an estimated \$200,000,000 for reducing
13 the susceptibility of certain circuits to
14 storm-related damage, including, but not limited
15 to, high winds, thunderstorms, and ice storms;
16 improvements may include, but are not limited to,
17 overhead to underground conversion and other
18 engineered outcomes for circuits; the
19 participating utility shall prioritize the
20 selection of circuits based on each circuit's
21 historical susceptibility to storm-related damage
22 and the ability to provide the greatest customer
23 benefit upon completion of the improvements; to be
24 eligible for improvement, the participating
25 utility's ability to maintain proper tree
26 clearances surrounding the overhead circuit must

1 not have been impeded by third parties; and

2 (B) over a 10-year period, invest an estimated
3 \$1,300,000,000 to upgrade and modernize its
4 transmission and distribution infrastructure and in
5 Smart Grid electric system upgrades, including, but
6 not limited to:

7 (i) additional smart meters;

8 (ii) distribution automation;

9 (iii) associated cyber secure data
10 communication network; and

11 (iv) substation micro-processor relay
12 upgrades.

13 (2) Beginning no later than 180 days after a
14 participating utility that is a combination utility files a
15 performance-based formula rate tariff pursuant to
16 subsection (c) of this Section, or, beginning no later than
17 January 1, 2012 if such utility files such
18 performance-based formula rate tariff within 14 days of the
19 effective date of this amendatory Act of the 97th General
20 Assembly, the participating utility shall, except as
21 provided in subsection (b-5):

22 (A) over a 10-year period, invest an estimated
23 \$265,000,000 in electric system upgrades,
24 modernization projects, and training facilities,
25 including, but not limited to:

26 (i) distribution infrastructure improvements

1 totaling an estimated \$245,000,000, which may
2 include bulk supply substations, transformers,
3 reconductoring, and rebuilding overhead
4 distribution and sub-transmission lines,
5 underground residential distribution cable
6 injection and replacement and mainline cable
7 system refurbishment and replacement projects;

8 (ii) training facility construction or upgrade
9 projects totaling an estimated \$1,000,000; any
10 such new facility must be designed for the purpose
11 of obtaining, and the owner of the facility shall
12 apply for, certification under the United States
13 Green Building Council's Leadership in Energy
14 Efficiency Design Green Building Rating System;
15 and

16 (iii) wood pole inspection, treatment, and
17 replacement programs; and

18 (B) over a 10-year period, invest an estimated
19 \$360,000,000 to upgrade and modernize its transmission
20 and distribution infrastructure and in Smart Grid
21 electric system upgrades, including, but not limited
22 to:

23 (i) additional smart meters;

24 (ii) distribution automation;

25 (iii) associated cyber secure data
26 communication network; and

1 (iv) substation micro-processor relay
2 upgrades.

3 For purposes of this Section, "Smart Grid electric system
4 upgrades" shall have the meaning set forth in subsection (a) of
5 Section 16-108.6 of this Act.

6 The investments in the infrastructure investment program
7 described in this subsection (b) shall be incremental to the
8 participating utility's annual capital investment program, as
9 defined by, for purposes of this subsection (b), the
10 participating utility's average capital spend for calendar
11 years 2008, 2009, and 2010 as reported in the applicable
12 Federal Energy Regulatory Commission (FERC) Form 1; provided
13 that where one or more utilities have merged, the average
14 capital spend shall be determined using the aggregate of the
15 merged utilities' capital spend reported in FERC Form 1 for the
16 years 2008, 2009, and 2010. A participating utility may add
17 reasonable construction ramp-up and ramp-down time to the
18 investment periods specified in this subsection (b). For each
19 such investment period, the ramp-up and ramp-down time shall
20 not exceed a total of 6 months.

21 Within 60 days after filing a tariff under subsection (c)
22 of this Section, a participating utility shall submit to the
23 Commission its plan, including scope, schedule, and staffing,
24 for satisfying its infrastructure investment program
25 commitments pursuant to this subsection (b). The submitted plan
26 shall include a schedule and staffing plan for the next

1 calendar year. The plan shall also include a plan for the
2 creation, operation, and administration of a Smart Grid test
3 bed as described in subsection (c) of Section 16-108.8. The
4 plan need not allocate the work equally over the respective
5 periods, but should allocate material increments throughout
6 such periods commensurate with the work to be undertaken. No
7 later than April 1 of each subsequent year, the utility shall
8 submit to the Commission a report that includes any updates to
9 the plan, a schedule for the next calendar year, the
10 expenditures made for the prior calendar year and cumulatively,
11 and the number of full-time equivalent jobs created for the
12 prior calendar year and cumulatively. If the utility is
13 materially deficient in satisfying a schedule or staffing plan,
14 then the report must also include a corrective action plan to
15 address the deficiency. The fact that the plan, implementation
16 of the plan, or a schedule changes shall not imply the
17 imprudence or unreasonableness of the infrastructure
18 investment program, plan, or schedule. Further, no later than
19 45 days following the last day of the first, second, and third
20 quarters of each year of the plan, a participating utility
21 shall submit to the Commission a verified quarterly report for
22 the prior quarter that includes (i) the total number of
23 full-time equivalent jobs created during the prior quarter,
24 (ii) the total number of employees as of the last day of the
25 prior quarter, (iii) the total number of full-time equivalent
26 hours in each job classification or job title, (iv) the total

1 number of incremental employees and contractors in support of
2 the investments undertaken pursuant to this subsection (b) for
3 the prior quarter, and (v) any other information that the
4 Commission may require by rule.

5 With respect to the participating utility's peak job
6 commitment, if, after considering the utility's corrective
7 action plan and compliance thereunder, the Commission enters an
8 order finding, after notice and hearing, that a participating
9 utility did not satisfy its peak job commitment described in
10 this subsection (b) for reasons that are reasonably within its
11 control, then the Commission shall also determine, after
12 consideration of the evidence, including, but not limited to,
13 evidence submitted by the Department of Commerce and Economic
14 Opportunity and the utility, the deficiency in the number of
15 full-time equivalent jobs during the peak program year due to
16 such failure. The Commission shall notify the Department of any
17 proceeding that is initiated pursuant to this paragraph. For
18 each full-time equivalent job deficiency during the peak
19 program year that the Commission finds as set forth in this
20 paragraph, the participating utility shall, within 30 days
21 after the entry of the Commission's order, pay \$6,000 to a fund
22 for training grants administered under Section 605-800 of The
23 Department of Commerce and Economic Opportunity Law, which
24 shall not be a recoverable expense.

25 With respect to the participating utility's investment
26 amount commitments, if, after considering the utility's

1 corrective action plan and compliance thereunder, the
2 Commission enters an order finding, after notice and hearing,
3 that a participating utility is not satisfying its investment
4 amount commitments described in this subsection (b), then the
5 utility shall no longer be eligible to annually update the
6 performance-based formula rate tariff pursuant to subsection
7 (d) of this Section. In such event, the then current rates
8 shall remain in effect until such time as new rates are set
9 pursuant to Article IX of this Act, subject to retroactive
10 adjustment, with interest, to reconcile rates charged with
11 actual costs.

12 If the Commission finds that a participating utility is no
13 longer eligible to update the performance-based formula rate
14 tariff pursuant to subsection (d) of this Section, or the
15 performance-based formula rate is otherwise terminated, then
16 the participating utility's voluntary commitments and
17 obligations under this subsection (b) shall immediately
18 terminate, except for the utility's obligation to pay an amount
19 already owed to the fund for training grants pursuant to a
20 Commission order.

21 In meeting the obligations of this subsection (b), to the
22 extent feasible and consistent with State and federal law, the
23 investments under the infrastructure investment program should
24 provide employment opportunities for all segments of the
25 population and workforce, including minority-owned and
26 female-owned business enterprises, and shall not, consistent

1 with State and federal law, discriminate based on race or
2 socioeconomic status.

3 (b-5) Nothing in this Section shall prohibit the Commission
4 from investigating the prudence and reasonableness of the
5 expenditures made under the infrastructure investment program
6 during the annual review required by subsection (d) of this
7 Section and shall, as part of such investigation, determine
8 whether the utility's actual costs under the program are
9 prudent and reasonable. The fact that a participating utility
10 invests more than the minimum amounts specified in subsection
11 (b) of this Section or its plan shall not imply imprudence or
12 unreasonableness.

13 If the participating utility finds that it is implementing
14 its plan for satisfying the infrastructure investment program
15 commitments described in subsection (b) of this Section at a
16 cost below the estimated amounts specified in subsection (b) of
17 this Section, then the utility may file a petition with the
18 Commission requesting that it be permitted to satisfy its
19 commitments by spending less than the estimated amounts
20 specified in subsection (b) of this Section. The Commission
21 shall, after notice and hearing, enter its order approving, or
22 approving as modified, or denying each such petition within 150
23 days after the filing of the petition.

24 In no event, absent General Assembly approval, shall the
25 capital investment costs incurred by a participating utility
26 other than a combination utility in satisfying its

1 infrastructure investment program commitments described in
2 subsection (b) of this Section exceed \$3,000,000,000 or, for a
3 participating utility that is a combination utility,
4 \$720,000,000. If the participating utility's updated cost
5 estimates for satisfying its infrastructure investment program
6 commitments described in subsection (b) of this Section exceed
7 the limitation imposed by this subsection (b-5), then it shall
8 submit a report to the Commission that identifies the increased
9 costs and explains the reason or reasons for the increased
10 costs no later than the year in which the utility estimates it
11 will exceed the limitation. The Commission shall review the
12 report and shall, within 90 days after the participating
13 utility files the report, report to the General Assembly its
14 findings regarding the participating utility's report. If the
15 General Assembly does not amend the limitation imposed by this
16 subsection (b-5), then the utility may modify its plan so as
17 not to exceed the limitation imposed by this subsection (b-5)
18 and may propose corresponding changes to the metrics
19 established pursuant to subparagraphs (5) through (8) of
20 subsection (f) of this Section, and the Commission may modify
21 the metrics and incremental savings goals established pursuant
22 to subsection (f) of this Section accordingly.

23 (b-10) All participating utilities shall make
24 contributions for an energy low-income and support program in
25 accordance with this subsection. Beginning no later than 180
26 days after a participating utility files a performance-based

1 formula rate tariff pursuant to subsection (c) of this Section,
2 or beginning no later than January 1, 2012 if such utility
3 files such performance-based formula rate tariff within 14 days
4 of the effective date of this amendatory Act of the 97th
5 General Assembly, and without obtaining any approvals from the
6 Commission or any other agency other than as set forth in this
7 Section, regardless of whether any such approval would
8 otherwise be required, a participating utility other than a
9 combination utility shall pay \$10,000,000 per year for 5 years
10 and a participating utility that is a combination utility shall
11 pay \$1,000,000 per year for 10 years to the energy low-income
12 and support program, which is intended to fund customer
13 assistance programs with the primary purpose being avoidance of
14 imminent disconnection. Such programs may include:

15 (1) a residential hardship program that may partner
16 with community-based organizations, including senior
17 citizen organizations, and provides grants to low-income
18 residential customers, including low-income senior
19 citizens, who demonstrate a hardship;

20 (2) a program that provides grants and other bill
21 payment concessions to disabled veterans who demonstrate a
22 hardship and members of the armed services or reserve
23 forces of the United States or members of the Illinois
24 National Guard who are on active duty pursuant to an
25 executive order of the President of the United States, an
26 act of the Congress of the United States, or an order of

1 the Governor and who demonstrate a hardship;

2 (3) a budget assistance program that provides tools and
3 education to low-income senior citizens to assist them with
4 obtaining information regarding energy usage and effective
5 means of managing energy costs;

6 (4) a non-residential special hardship program that
7 provides grants to non-residential customers such as small
8 businesses and non-profit organizations that demonstrate a
9 hardship, including those providing services to senior
10 citizen and low-income customers; and

11 (5) a performance-based assistance program that
12 provides grants to encourage residential customers to make
13 on-time payments by matching a portion of the customer's
14 payments or providing credits towards arrearages.

15 The payments made by a participating utility pursuant to
16 this subsection (b-10) shall not be a recoverable expense. A
17 participating utility may elect to fund either new or existing
18 customer assistance programs, including, but not limited to,
19 those that are administered by the utility.

20 Programs that use funds that are provided by a
21 participating utility to reduce utility bills may be
22 implemented through tariffs that are filed with and reviewed by
23 the Commission. If a utility elects to file tariffs with the
24 Commission to implement all or a portion of the programs, those
25 tariffs shall, regardless of the date actually filed, be deemed
26 accepted and approved, and shall become effective on the

1 effective date of this amendatory Act of the 97th General
2 Assembly. The participating utilities whose customers benefit
3 from the funds that are disbursed as contemplated in this
4 Section shall file annual reports documenting the disbursement
5 of those funds with the Commission. The Commission has the
6 authority to audit disbursement of the funds to ensure they
7 were disbursed consistently with this Section.

8 If the Commission finds that a participating utility is no
9 longer eligible to update the performance-based formula rate
10 tariff pursuant to subsection (d) of this Section, or the
11 performance-based formula rate is otherwise terminated, then
12 the participating utility's voluntary commitments and
13 obligations under this subsection (b-10) shall immediately
14 terminate.

15 (c) A participating utility may elect to recover its
16 delivery services costs through a performance-based formula
17 rate approved by the Commission, which shall specify the cost
18 components that form the basis of the rate charged to customers
19 with sufficient specificity to operate in a standardized manner
20 and be updated annually with transparent information that
21 reflects the utility's actual costs to be recovered during the
22 applicable rate year, which is the period beginning with the
23 first billing day of January and extending through the last
24 billing day of the following December. In the event the utility
25 recovers a portion of its costs through automatic adjustment
26 clause tariffs on the effective date of this amendatory Act of

1 the 97th General Assembly, the utility may elect to continue to
2 recover these costs through such tariffs, but then these costs
3 shall not be recovered through the performance-based formula
4 rate. In the event the participating utility, prior to the
5 effective date of this amendatory Act of the 97th General
6 Assembly, filed electric delivery services tariffs with the
7 Commission pursuant to Section 9-201 of this Act that are
8 related to the recovery of its electric delivery services costs
9 that are still pending on the effective date of this amendatory
10 Act of the 97th General Assembly, the participating utility
11 shall, at the time it files its performance-based formula rate
12 tariff with the Commission, also file a notice of withdrawal
13 with the Commission to withdraw the electric delivery services
14 tariffs previously filed pursuant to Section 9-201 of this Act.
15 Upon receipt of such notice, the Commission shall dismiss with
16 prejudice any docket that had been initiated to investigate the
17 electric delivery services tariffs filed pursuant to Section
18 9-201 of this Act, and such tariffs and the record related
19 thereto shall not be the subject of any further hearing,
20 investigation, or proceeding of any kind related to rates for
21 electric delivery services.

22 The performance-based formula rate shall be implemented
23 through a tariff filed with the Commission consistent with the
24 provisions of this subsection (c) that shall be applicable to
25 all delivery services customers. The Commission shall initiate
26 and conduct an investigation of the tariff in a manner

1 consistent with the provisions of this subsection (c) and the
2 provisions of Article IX of this Act to the extent they do not
3 conflict with this subsection (c). Except in the case where the
4 Commission finds, after notice and hearing, that a
5 participating utility is not satisfying its investment amount
6 commitments under subsection (b) of this Section, the
7 performance-based formula rate shall remain in effect at the
8 discretion of the utility. The performance-based formula rate
9 approved by the Commission shall do the following:

10 (1) Provide for the recovery of the utility's actual
11 costs of delivery services that are prudently incurred and
12 reasonable in amount consistent with Commission practice
13 and law. The sole fact that a cost differs from that
14 incurred in a prior calendar year or that an investment is
15 different from that made in a prior calendar year shall not
16 imply the imprudence or unreasonableness of that cost or
17 investment.

18 (2) Reflect the utility's actual capital structure for
19 the applicable calendar year, excluding goodwill, subject
20 to a determination of prudence and reasonableness
21 consistent with Commission practice and law.

22 (3) Include a cost of equity, which shall be calculated
23 as the sum of the following:

24 (A) the average for the applicable calendar year of
25 the monthly average yields of 30-year U.S. Treasury
26 bonds published by the Board of Governors of the

1 Federal Reserve System in its weekly H.15 Statistical
2 Release or successor publication; and

3 (B) 580 basis points.

4 At such time as the Board of Governors of the Federal
5 Reserve System ceases to include the monthly average yields
6 of 30-year U.S. Treasury bonds in its weekly H.15
7 Statistical Release or successor publication, the monthly
8 average yields of the U.S. Treasury bonds then having the
9 longest duration published by the Board of Governors in its
10 weekly H.15 Statistical Release or successor publication
11 shall instead be used for purposes of this paragraph (3).

12 (4) Permit and set forth protocols, subject to a
13 determination of prudence and reasonableness consistent
14 with Commission practice and law, for the following:

15 (A) recovery of incentive compensation expense
16 that is based on the achievement of operational
17 metrics, including metrics related to budget controls,
18 outage duration and frequency, safety, customer
19 service, efficiency and productivity, and
20 environmental compliance. Incentive compensation
21 expense that is based on net income or an affiliate's
22 earnings per share shall not be recoverable under the
23 performance-based formula rate;

24 (B) recovery of pension and other post-employment
25 benefits expense, provided that such costs are
26 supported by an actuarial study;

1 (C) recovery of severance costs, provided that if
2 the amount is over \$3,700,000 for a participating
3 utility that is a combination utility or \$10,000,000
4 for a participating utility that serves more than 3
5 million retail customers, then the full amount shall be
6 amortized consistent with subparagraph (F) of this
7 paragraph (4);

8 (D) investment return on pension assets net of
9 deferred tax benefits equal to the utility's long-term
10 debt cost of capital as of the end of the applicable
11 calendar year;

12 (E) recovery of the expenses related to the
13 Commission proceeding under this subsection (c) to
14 approve this performance-based formula rate and
15 initial rates or to subsequent proceedings related to
16 the formula, provided that the recovery shall be
17 amortized over a 3-year period; recovery of expenses
18 related to the annual Commission proceedings under
19 subsection (d) of this Section to review the inputs to
20 the performance-based formula rate shall be expensed
21 and recovered through the performance-based formula
22 rate;

23 (F) amortization over a 5-year period of the full
24 amount of each charge or credit that exceeds \$3,700,000
25 for a participating utility that is a combination
26 utility or \$10,000,000 for a participating utility

1 that serves more than 3 million retail customers in the
2 applicable calendar year and that relates to a
3 workforce reduction program's severance costs, changes
4 in accounting rules, changes in law, compliance with
5 any Commission-initiated audit, or a single storm or
6 other similar expense, provided that any unamortized
7 balance shall be reflected in rate base. For purposes
8 of this subparagraph (F), changes in law includes any
9 enactment, repeal, or amendment in a law, ordinance,
10 rule, regulation, interpretation, permit, license,
11 consent, or order, including those relating to taxes,
12 accounting, or to environmental matters, or in the
13 interpretation or application thereof by any
14 governmental authority occurring after the effective
15 date of this amendatory Act of the 97th General
16 Assembly;

17 (G) recovery of existing regulatory assets over
18 the periods previously authorized by the Commission;

19 (H) historical weather normalized billing
20 determinants; and

21 (I) allocation methods for common costs.

22 (5) Provide that if the participating utility's earned
23 rate of return on common equity related to the provision of
24 delivery services for the prior rate year (calculated using
25 costs and capital structure approved by the Commission as
26 provided in subparagraph (2) of this subsection (c),

1 consistent with this Section, in accordance with
2 Commission rules and orders, including, but not limited to,
3 adjustments for goodwill, and after any Commission-ordered
4 disallowances and taxes) is more than 50 basis points
5 higher than the rate of return on common equity calculated
6 pursuant to paragraph (3) of this subsection (c) (after
7 adjusting for any penalties to the rate of return on common
8 equity applied pursuant to the performance metrics
9 provision of subsection (f) of this Section), then the
10 participating utility shall apply a credit through the
11 performance-based formula rate that reflects an amount
12 equal to the value of that portion of the earned rate of
13 return on common equity that is more than 50 basis points
14 higher than the rate of return on common equity calculated
15 pursuant to paragraph (3) of this subsection (c) (after
16 adjusting for any penalties to the rate of return on common
17 equity applied pursuant to the performance metrics
18 provision of subsection (f) of this Section) for the prior
19 rate year, adjusted for taxes. If the participating
20 utility's earned rate of return on common equity related to
21 the provision of delivery services for the prior rate year
22 (calculated using costs and capital structure approved by
23 the Commission as provided in subparagraph (2) of this
24 subsection (c), consistent with this Section, in
25 accordance with Commission rules and orders, including,
26 but not limited to, adjustments for goodwill, and after any

1 Commission-ordered disallowances and taxes) is more than
2 50 basis points less than the return on common equity
3 calculated pursuant to paragraph (3) of this subsection (c)
4 (after adjusting for any penalties to the rate of return on
5 common equity applied pursuant to the performance metrics
6 provision of subsection (f) of this Section), then the
7 participating utility shall apply a charge through the
8 performance-based formula rate that reflects an amount
9 equal to the value of that portion of the earned rate of
10 return on common equity that is more than 50 basis points
11 less than the rate of return on common equity calculated
12 pursuant to paragraph (3) of this subsection (c) (after
13 adjusting for any penalties to the rate of return on common
14 equity applied pursuant to the performance metrics
15 provision of subsection (f) of this Section) for the prior
16 rate year, adjusted for taxes.

17 (6) Provide for an annual reconciliation, with
18 interest as described in subsection (d) of this Section, of
19 the revenue requirement reflected in rates for each
20 calendar year, beginning with the calendar year in which
21 the utility files its performance-based formula rate
22 tariff pursuant to subsection (c) of this Section, with
23 what the revenue requirement would have been had the actual
24 cost information for the applicable calendar year been
25 available at the filing date.

26 The utility shall file, together with its tariff, final

1 data based on its most recently filed FERC Form 1, plus
2 projected plant additions and correspondingly updated
3 depreciation reserve and expense for the calendar year in which
4 the tariff and data are filed, that shall populate the
5 performance-based formula rate and set the initial delivery
6 services rates under the formula. For purposes of this Section,
7 "FERC Form 1" means the Annual Report of Major Electric
8 Utilities, Licensees and Others that electric utilities are
9 required to file with the Federal Energy Regulatory Commission
10 under the Federal Power Act, Sections 3, 4(a), 304 and 209,
11 modified as necessary to be consistent with 83 Ill. Admin. Code
12 Part 415 as of May 1, 2011. Nothing in this Section is intended
13 to allow costs that are not otherwise recoverable to be
14 recoverable by virtue of inclusion in FERC Form 1.

15 After the utility files its proposed performance-based
16 formula rate structure and protocols and initial rates, the
17 Commission shall initiate a docket to review the filing. The
18 Commission shall enter an order approving, or approving as
19 modified, the performance-based formula rate, including the
20 initial rates, as just and reasonable within 270 days after the
21 date on which the tariff was filed, or, if the tariff is filed
22 within 14 days after the effective date of this amendatory Act
23 of the 97th General Assembly, then by May 31, 2012. Such review
24 shall be based on the same evidentiary standards, including,
25 but not limited to, those concerning the prudence and
26 reasonableness of the costs incurred by the utility, the

1 Commission applies in a hearing to review a filing for a
2 general increase in rates under Article IX of this Act. The
3 initial rates shall take effect within 30 days after the
4 Commission's order approving the performance-based formula
5 rate tariff.

6 Until such time as the Commission approves a different rate
7 design and cost allocation pursuant to subsection (e) of this
8 Section, rate design and cost allocation across customer
9 classes shall be consistent with the Commission's most recent
10 order regarding the participating utility's request for a
11 general increase in its delivery services rates.

12 Subsequent changes to the performance-based formula rate
13 structure or protocols shall be made as set forth in Section
14 9-201 of this Act, but nothing in this subsection (c) is
15 intended to limit the Commission's authority under Article IX
16 and other provisions of this Act to initiate an investigation
17 of a participating utility's performance-based formula rate
18 tariff, provided that any such changes shall be consistent with
19 paragraphs (1) through (6) of this subsection (c). Any change
20 ordered by the Commission shall be made at the same time new
21 rates take effect following the Commission's next order
22 pursuant to subsection (d) of this Section, provided that the
23 new rates take effect no less than 30 days after the date on
24 which the Commission issues an order adopting the change.

25 A participating utility that files a tariff pursuant to
26 this subsection (c) must submit a one-time \$200,000 filing fee

1 at the time the Chief Clerk of the Commission accepts the
2 filing, which shall be a recoverable expense.

3 In the event the performance-based formula rate is
4 terminated, the then current rates shall remain in effect until
5 such time as new rates are set pursuant to Article IX of this
6 Act, subject to retroactive rate adjustment, with interest, to
7 reconcile rates charged with actual costs. At such time that
8 the performance-based formula rate is terminated, the
9 participating utility's voluntary commitments and obligations
10 under subsection (b) of this Section shall immediately
11 terminate, except for the utility's obligation to pay an amount
12 already owed to the fund for training grants pursuant to a
13 Commission order issued under subsection (b) of this Section.

14 (d) Subsequent to the Commission's issuance of an order
15 approving the utility's performance-based formula rate
16 structure and protocols, and initial rates under subsection (c)
17 of this Section, the utility shall file, on or before May 1 of
18 each year, with the Chief Clerk of the Commission its updated
19 cost inputs to the performance-based formula rate for the
20 applicable rate year and the corresponding new charges. Each
21 such filing shall conform to the following requirements and
22 include the following information:

23 (1) The inputs to the performance-based formula rate
24 for the applicable rate year shall be based on final
25 historical data reflected in the utility's most recently
26 filed annual FERC Form 1 plus projected plant additions and

1 correspondingly updated depreciation reserve and expense
2 for the calendar year in which the inputs are filed. The
3 filing shall also include a reconciliation of the revenue
4 requirement that was in effect for the prior rate year (as
5 set by the cost inputs for the prior rate year) with the
6 actual revenue requirement for the prior rate year (as
7 reflected in the applicable FERC Form 1 that reports the
8 actual costs for the prior rate year). Any over-collection
9 or under-collection indicated by such reconciliation shall
10 be reflected as a credit against, or recovered as an
11 additional charge to, respectively, with interest, the
12 charges for the applicable rate year. Provided, however,
13 that the first such reconciliation shall be for the
14 calendar year in which the utility files its
15 performance-based formula rate tariff pursuant to
16 subsection (c) of this Section and shall reconcile (i) the
17 revenue requirement or requirements established by the
18 rate order or orders in effect from time to time during
19 such calendar year (weighted, as applicable) with (ii) the
20 revenue requirement for that calendar year calculated
21 pursuant to the performance-based formula rate using (A)
22 actual costs for that year as reflected in the applicable
23 FERC Form 1, and (B) for the first such reconciliation
24 only, the cost of equity, which shall be calculated as the
25 sum of 590 basis points plus the average for the applicable
26 calendar year of the monthly average yields of 30-year U.S.

1 Treasury bonds published by the Board of Governors of the
2 Federal Reserve System in its weekly H.15 Statistical
3 Release or successor publication. The first such
4 reconciliation is not intended to provide for the recovery
5 of costs previously excluded from rates based on a prior
6 Commission order finding of imprudence or
7 unreasonableness. Each reconciliation shall be certified
8 by the participating utility in the same manner that FERC
9 Form 1 is certified. The filing shall also include the
10 charge or credit, if any, resulting from the calculation
11 required by paragraph (6) of subsection (c) of this
12 Section.

13 Notwithstanding anything that may be to the contrary,
14 the intent of the reconciliation is to ultimately reconcile
15 the revenue requirement reflected in rates for each
16 calendar year, beginning with the calendar year in which
17 the utility files its performance-based formula rate
18 tariff pursuant to subsection (c) of this Section, with
19 what the revenue requirement would have been had the actual
20 cost information for the applicable calendar year been
21 available at the filing date.

22 (2) The new charges shall take effect beginning on the
23 first billing day of the following January billing period
24 and remain in effect through the last billing day of the
25 next December billing period regardless of whether the
26 Commission enters upon a hearing pursuant to this

1 subsection (d).

2 (3) The filing shall include relevant and necessary
3 data and documentation for the applicable rate year that is
4 consistent with the Commission's rules applicable to a
5 filing for a general increase in rates or any rules adopted
6 by the Commission to implement this Section. Normalization
7 adjustments shall not be required. Notwithstanding any
8 other provision of this Section or Act or any rule or other
9 requirement adopted by the Commission, a participating
10 utility that is a combination utility with more than one
11 rate zone shall not be required to file a separate set of
12 such data and documentation for each rate zone and may
13 combine such data and documentation into a single set of
14 schedules.

15 Within 45 days after the utility files its annual update of
16 cost inputs to the performance-based formula rate, the
17 Commission shall have the authority, either upon complaint or
18 its own initiative, but with reasonable notice, to enter upon a
19 hearing concerning the prudence and reasonableness of the costs
20 incurred by the utility to be recovered during the applicable
21 rate year that are reflected in the inputs to the
22 performance-based formula rate derived from the utility's FERC
23 Form 1. During the course of the hearing, each objection shall
24 be stated with particularity and evidence provided in support
25 thereof, after which the utility shall have the opportunity to
26 rebut the evidence. Discovery shall be allowed consistent with

1 the Commission's Rules of Practice, which Rules shall be
2 enforced by the Commission or the assigned hearing examiner.
3 The Commission shall apply the same evidentiary standards,
4 including, but not limited to, those concerning the prudence
5 and reasonableness of the costs incurred by the utility, in the
6 hearing as it would apply in a hearing to review a filing for a
7 general increase in rates under Article IX of this Act. The
8 Commission shall not, however, have the authority in a
9 proceeding under this subsection (d) to consider or order any
10 changes to the structure or protocols of the performance-based
11 formula rate approved pursuant to subsection (c) of this
12 Section. In a proceeding under this subsection (d), the
13 Commission shall enter its order no later than the earlier of
14 240 days after the utility's filing of its annual update of
15 cost inputs to the performance-based formula rate or December
16 31. The Commission's determinations of the prudence and
17 reasonableness of the costs incurred for the applicable
18 calendar year shall be final upon entry of the Commission's
19 order and shall not be subject to reopening, reexamination, or
20 collateral attack in any other Commission proceeding, case,
21 docket, order, rule or regulation, provided, however, that
22 nothing in this subsection (d) shall prohibit a party from
23 petitioning the Commission to rehear or appeal to the courts
24 the order pursuant to the provisions of this Act.

25 In the event the Commission does not, either upon complaint
26 or its own initiative, enter upon a hearing within 45 days

1 after the utility files the annual update of cost inputs to its
2 performance-based formula rate, then the costs incurred for the
3 applicable calendar year shall be deemed prudent and
4 reasonable, and the filed charges shall not be subject to
5 reopening, reexamination, or collateral attack in any other
6 proceeding, case, docket, order, rule, or regulation.

7 A participating utility's first filing of the updated cost
8 inputs, and any Commission investigation of such inputs
9 pursuant to this subsection (d) shall proceed notwithstanding
10 the fact that the Commission's investigation under subsection
11 (c) of this Section is still pending and notwithstanding any
12 other law, order, rule, or Commission practice to the contrary.

13 (e) Nothing in subsections (c) or (d) of this Section shall
14 prohibit the Commission from investigating, or a participating
15 utility from filing, revenue-neutral tariff changes related to
16 rate design of a performance-based formula rate that has been
17 placed into effect for the utility. Following approval of a
18 participating utility's performance-based formula rate tariff
19 pursuant to subsection (c) of this Section, the utility shall
20 make a filing with the Commission within one year after the
21 effective date of the performance-based formula rate tariff
22 that proposes changes to the tariff to incorporate the findings
23 of any final rate design orders of the Commission applicable to
24 the participating utility and entered subsequent to the
25 Commission's approval of the tariff. The Commission shall,
26 after notice and hearing, enter its order approving, or

1 approving with modification, the proposed changes to the
2 performance-based formula rate tariff within 240 days after the
3 utility's filing. Following such approval, the utility shall
4 make a filing with the Commission during each subsequent 3-year
5 period that either proposes revenue-neutral tariff changes or
6 re-files the existing tariffs without change, which shall
7 present the Commission with an opportunity to suspend the
8 tariffs and consider revenue-neutral tariff changes related to
9 rate design.

10 (f) Within 30 days after the filing of a tariff pursuant to
11 subsection (c) of this Section, each participating utility
12 shall develop and file with the Commission multi-year metrics
13 designed to achieve, ratably (i.e., in equal segments) over a
14 10-year period, improvement over baseline performance values
15 as follows:

16 (1) Twenty percent improvement in the System Average
17 Interruption Frequency Index, using a baseline of the
18 average of the data from 2001 through 2010.

19 (2) Fifteen percent improvement in the system Customer
20 Average Interruption Duration Index, using a baseline of
21 the average of the data from 2001 through 2010.

22 (3) For a participating utility other than a
23 combination utility, 20% improvement in the System Average
24 Interruption Frequency Index for its Southern Region,
25 using a baseline of the average of the data from 2001
26 through 2010. For purposes of this paragraph (3), Southern

1 Region shall have the meaning set forth in the
2 participating utility's most recent report filed pursuant
3 to Section 16-125 of this Act.

4 (3.5) For a participating utility other than a
5 combination utility, 20% improvement in the System Average
6 Interruption Frequency Index for its Northeastern Region,
7 using a baseline of the average of the data from 2001
8 through 2010. For purposes of this paragraph (3.5),
9 Northeastern Region shall have the meaning set forth in the
10 participating utility's most recent report filed pursuant
11 to Section 16-125 of this Act.

12 (4) Seventy-five percent improvement in the total
13 number of customers who exceed the service reliability
14 targets as set forth in subparagraphs (A) through (C) of
15 paragraph (4) of subsection (b) of 83 Ill. Admin. Code Part
16 411.140 as of May 1, 2011, using 2010 as the baseline year.

17 (5) Reduction in issuance of estimated electric bills:
18 90% improvement for a participating utility other than a
19 combination utility, and 56% improvement for a
20 participating utility that is a combination utility, using
21 a baseline of the average number of estimated bills for the
22 years 2008 through 2010.

23 (6) Consumption on inactive meters: 90% improvement
24 for a participating utility other than a combination
25 utility, and 56% improvement for a participating utility
26 that is a combination utility, using a baseline of the

1 average unbilled kilowatthours for the years 2009 and 2010.

2 (7) Unaccounted for energy: 50% improvement for a
3 participating utility other than a combination utility
4 using a baseline of the non-technical line loss unaccounted
5 for energy kilowatthours for the year 2009.

6 (8) Uncollectible expense: reduce uncollectible
7 expense by at least \$30,000,000 for a participating utility
8 other than a combination utility and by at least \$3,500,000
9 for a participating utility that is a combination utility,
10 using a baseline of the average uncollectible expense for
11 the years 2008 through 2010.

12 (9) Opportunities for minority-owned and female-owned
13 business enterprises: design a performance metric
14 regarding the creation of opportunities for minority-owned
15 and female-owned business enterprises consistent with
16 State and federal law using a base performance value of the
17 percentage of the participating utility's capital
18 expenditures that were paid to minority-owned and
19 female-owned business enterprises in 2010.

20 The definitions set forth in 83 Ill. Admin. Code Part
21 411.20 as of May 1, 2011 shall be used for purposes of
22 calculating performance under paragraphs (1) through (3.5) of
23 this subsection (f), provided, however, that the participating
24 utility may exclude up to 9 extreme weather event days from
25 such calculation for each year, and provided further that the
26 participating utility shall exclude 9 extreme weather event

1 days when calculating each year of the baseline period to the
2 extent that there are 9 such days in a given year of the
3 baseline period. For purposes of this Section, an extreme
4 weather event day is a 24-hour calendar day (beginning at 12:00
5 a.m. and ending at 11:59 p.m.) during which any weather event
6 (e.g., storm, tornado) caused interruptions for 10,000 or more
7 of the participating utility's customers for 3 hours or more.
8 If there are more than 9 extreme weather event days in a year,
9 then the utility may choose no more than 9 extreme weather
10 event days to exclude, provided that the same extreme weather
11 event days are excluded from each of the calculations performed
12 under paragraphs (1) through (3.5) of this subsection (f).

13 The metrics shall include incremental performance goals
14 for each year of the 10-year period, which shall be designed to
15 demonstrate that the utility is on track to achieve the
16 performance goal in each category at the end of the 10-year
17 period. The utility shall elect when the 10-year period shall
18 commence for the metrics set forth in subparagraphs (1) through
19 (4) and (9) of this subsection (f), provided that it begins no
20 later than 14 months following the date on which the utility
21 begins investing pursuant to subsection (b) of this Section,
22 and when the 10-year period shall commence for the metrics set
23 forth in subparagraphs (5) through (8) of this subsection (f),
24 provided that it begins no later than 14 months following the
25 date on which the Commission enters its order approving the
26 utility's Advanced Metering Infrastructure Deployment Plan

1 pursuant to subsection (c) of Section 16-108.6 of this Act.

2 The metrics and performance goals set forth in
3 subparagraphs (5) through (8) of this subsection (f) are based
4 on the assumptions that the participating utility may fully
5 implement the technology described in subsection (b) of this
6 Section, including utilizing the full functionality of such
7 technology and that there is no requirement for personal
8 on-site notification. If the utility is unable to meet the
9 metrics and performance goals set forth in subparagraphs (5)
10 through (8) of this subsection (f) for such reasons, and the
11 Commission so finds after notice and hearing, then the utility
12 shall be excused from compliance, but only to the limited
13 extent achievement of the affected metrics and performance
14 goals was hindered by the less than full implementation.

15 (f-5) The financial penalties applicable to the metrics
16 described in subparagraphs (1) through (8) of subsection (f) of
17 this Section, as applicable, shall be applied through an
18 adjustment to the participating utility's return on equity of
19 no more than a total of 30 basis points in each of the first 3
20 years, of no more than a total of 34 basis points in each of the
21 3 years thereafter, and of no more than a total of 38 basis
22 points in each of the 4 years thereafter, as follows:

23 (1) With respect to each of the incremental annual
24 performance goals established pursuant to paragraph (1) of
25 subsection (f) of this Section,

26 (A) for each year that a participating utility

1 other than a combination utility does not achieve the
2 annual goal, the participating utility's return on
3 equity shall be reduced as follows: during years 1
4 through 3, by 5 basis points; during years 4 through 6,
5 by 6 basis points; and during years 7 through 10, by 7
6 basis points; and

7 (B) for each year that a participating utility that
8 is a combination utility does not achieve the annual
9 goal, the participating utility's return on equity
10 shall be reduced as follows: during years 1 through 3,
11 by 10 basis points; during years 4 through 6, by 12
12 basis points; and during years 7 through 10, by 14
13 basis points.

14 (2) With respect to each of the incremental annual
15 performance goals established pursuant to paragraph (2) of
16 subsection (f) of this Section, for each year that the
17 participating utility does not achieve each such goal, the
18 participating utility's return on equity shall be reduced
19 as follows: during years 1 through 3, by 5 basis points;
20 during years 4 through 6, by 6 basis points; and during
21 years 7 through 10, by 7 basis points.

22 (3) With respect to each of the incremental annual
23 performance goals established pursuant to paragraphs (3)
24 and (3.5) of subsection (f) of this Section, for each year
25 that a participating utility other than a combination
26 utility does not achieve both such goals, the participating

1 utility's return on equity shall be reduced as follows:
2 during years 1 through 3, by 5 basis points; during years 4
3 through 6, by 6 basis points; and during years 7 through
4 10, by 7 basis points.

5 (4) With respect to each of the incremental annual
6 performance goals established pursuant to paragraph (4) of
7 subsection (f) of this Section, for each year that the
8 participating utility does not achieve each such goal, the
9 participating utility's return on equity shall be reduced
10 as follows: during years 1 through 3, by 5 basis points;
11 during years 4 through 6, by 6 basis points; and during
12 years 7 through 10, by 7 basis points.

13 (5) With respect to each of the incremental annual
14 performance goals established pursuant to subparagraph (5)
15 of subsection (f) of this Section, for each year that the
16 participating utility does not achieve at least 95% of each
17 such goal, the participating utility's return on equity
18 shall be reduced by 5 basis points for each such unachieved
19 goal.

20 (6) With respect to each of the incremental annual
21 performance goals established pursuant to paragraphs (6),
22 (7), and (8) of subsection (f) of this Section, as
23 applicable, which together measure non-operational
24 customer savings and benefits relating to the
25 implementation of the Advanced Metering Infrastructure
26 Deployment Plan, as defined in Section 16-108.6 of this

1 Act, the performance under each such goal shall be
2 calculated in terms of the percentage of the goal achieved.
3 The percentage of goal achieved for each of the goals shall
4 be aggregated, and an average percentage value calculated,
5 for each year of the 10-year period. If the utility does
6 not achieve an average percentage value in a given year of
7 at least 95%, the participating utility's return on equity
8 shall be reduced by 5 basis points.

9 The financial penalties shall be applied as described in
10 this subsection (f-5) for the 12-month period in which the
11 deficiency occurred through a separate tariff mechanism, which
12 shall be filed by the utility together with its metrics. In the
13 event the formula rate tariff established pursuant to
14 subsection (c) of this Section terminates, the utility's
15 obligations under subsection (f) of this Section and this
16 subsection (f-5) shall also terminate, provided, however, that
17 the tariff mechanism established pursuant to subsection (f) of
18 this Section and this subsection (f-5) shall remain in effect
19 until any penalties due and owing at the time of such
20 termination are applied.

21 The Commission shall, after notice and hearing, enter an
22 order within 120 days after the metrics are filed approving, or
23 approving with modification, a participating utility's tariff
24 or mechanism to satisfy the metrics set forth in subsection (f)
25 of this Section. On June 1 of each subsequent year, each
26 participating utility shall file a report with the Commission

1 that includes, among other things, a description of how the
2 participating utility performed under each metric and an
3 identification of any extraordinary events that adversely
4 impacted the utility's performance. Whenever a participating
5 utility, other than a combination utility, does not satisfy the
6 metrics required pursuant to subsection (f) of this Section,
7 the Commission shall, after notice and hearing, enter an order
8 approving financial penalties in accordance with this
9 subsection (f-5). The Commission-approved financial penalties
10 shall be applied beginning with the next rate year. Nothing in
11 this Section shall authorize the Commission to reduce or
12 otherwise obviate the imposition of financial penalties for
13 failing to achieve one or more of the metrics established
14 pursuant to subparagraph (1) through (4) of subsection (f) of
15 this Section.

16 Whenever a participating utility that is a combination
17 utility does not achieve one of its annual performance goals
18 established pursuant to subsection (f) of this Section, then
19 the utility shall no longer be eligible to annually update the
20 performance-based formula rate tariff pursuant to subsection
21 (d) of this Section. In such event, the then current rates
22 shall remain in effect until such time as new rates are set
23 pursuant to Article IX of this Act, subject to retroactive
24 adjustment, with interest, to reconcile rates charged with
25 actual costs.

26 (g) On or before July 31, 2014, each participating utility

1 shall file a report with the Commission that sets forth the
2 average annual increase in the average amount paid per
3 kilowatthour for residential eligible retail customers,
4 exclusive of the effects of energy efficiency programs,
5 comparing the 12-month period ending May 31, 2012; the 12-month
6 period ending May 31, 2013; and the 12-month period ending May
7 31, 2014. For a participating utility that is a combination
8 utility with more than one rate zone, the weighted average
9 aggregate increase shall be provided. The report shall be filed
10 together with a statement from an independent auditor attesting
11 to the accuracy of the report. The cost of the independent
12 auditor shall be borne by the participating utility and shall
13 not be a recoverable expense.

14 In the event that the average annual increase exceeds 2.5%
15 as calculated pursuant to this subsection (g), then Sections
16 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other
17 than this subsection, shall be inoperative as they relate to
18 the utility and its service area as of the date of the report
19 due to be submitted pursuant to this subsection and the utility
20 shall no longer be eligible to annually update the
21 performance-based formula rate tariff pursuant to subsection
22 (d) of this Section. In such event, the then current rates
23 shall remain in effect until such time as new rates are set
24 pursuant to Article IX of this Act, subject to retroactive
25 adjustment, with interest, to reconcile rates charged with
26 actual costs, and the participating utility's voluntary

1 commitments and obligations under subsection (b) of this
2 Section shall immediately terminate, except for the utility's
3 obligation to pay an amount already owed to the fund for
4 training grants pursuant to a Commission order issued under
5 subsection (b) of this Section.

6 In the event that the average annual increase is 2.5% or
7 less as calculated pursuant to this subsection (g), then the
8 performance-based formula rate shall remain in effect as set
9 forth in this Section.

10 For purposes of this Section, the amount per kilowatthour
11 means the total amount paid for electric service expressed on a
12 per kilowatthour basis, and the total amount paid for electric
13 service includes without limitation amounts paid for supply,
14 transmission, distribution, surcharges, and add-on taxes
15 exclusive of any increases in taxes or new taxes imposed after
16 the effective date of this amendatory Act of the 97th General
17 Assembly. For purposes of this Section, "eligible retail
18 customers" shall have the meaning set forth in Section 16-111.5
19 of this Act.

20 The fact that this Section becomes inoperative as set forth
21 in this subsection shall not be construed to mean that the
22 Commission may reexamine or otherwise reopen prudence or
23 reasonableness determinations already made.

24 (h) Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of
25 this Act, other than this subsection, are inoperative after
26 December 31, 2017 for every participating utility, after which

1 time a participating utility shall no longer be eligible to
2 annually update the performance-based formula rate tariff
3 pursuant to subsection (d) of this Section. At such time, the
4 then current rates shall remain in effect until such time as
5 new rates are set pursuant to Article IX of this Act, subject
6 to retroactive adjustment, with interest, to reconcile rates
7 charged with actual costs.

8 By December 31, 2017, the Commission shall prepare and file
9 with the General Assembly a report on the infrastructure
10 program and the performance-based formula rate. The report
11 shall include the change in the average amount per kilowatthour
12 paid by residential customers between June 1, 2011 and May 31,
13 2017. If the change in the total average rate paid exceeds 2.5%
14 compounded annually, the Commission shall include in the report
15 an analysis that shows the portion of the change due to the
16 delivery services component and the portion of the change due
17 to the supply component of the rate. The report shall include
18 separate sections for each participating utility.

19 In the event Sections 16-108.5, 16-108.6, 16-108.7, and
20 16-108.8 of this Act do not become inoperative after December
21 31, 2017, then these Sections are inoperative after December
22 31, 2022 for every participating utility, after which time a
23 participating utility shall no longer be eligible to annually
24 update the performance-based formula rate tariff pursuant to
25 subsection (d) of this Section. At such time, the then current
26 rates shall remain in effect until such time as new rates are

1 set pursuant to Article IX of this Act, subject to retroactive
2 adjustment, with interest, to reconcile rates charged with
3 actual costs.

4 The fact that this Section becomes inoperative as set forth
5 in this subsection shall not be construed to mean that the
6 Commission may reexamine or otherwise reopen prudence or
7 reasonableness determinations already made.

8 (i) While a participating utility may use, develop, and
9 maintain broadband systems and the delivery of broadband
10 services, voice-over-internet-protocol services,
11 telecommunications services, and cable and video programming
12 services for use in providing delivery services and Smart Grid
13 functionality or application to its retail customers,
14 including, but not limited to, the installation,
15 implementation and maintenance of Smart Grid electric system
16 upgrades as defined in Section 16-108.6 of this Act, a
17 participating utility is prohibited from offering to its retail
18 customers broadband services or the delivery of broadband
19 services, voice-over-internet-protocol services,
20 telecommunications services, or cable or video programming
21 services, unless they are part of a service directly related to
22 delivery services or Smart Grid functionality or applications
23 as defined in Section 16-108.6 of this Act, and from recovering
24 the costs of such offerings from retail customers.

25 (j) Nothing in this Section is intended to legislatively
26 overturn the opinion issued in Commonwealth Edison Co. v. Ill.

1 Commerce Comm'n, Nos. 2-08-0959, 2-08-1037, 2-08-1137,
2 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App.
3 Ct. 2d Dist. Sept. 30, 2010). This amendatory Act of the 97th
4 General Assembly shall not be construed as creating a contract
5 between the General Assembly and the participating utility, and
6 shall not establish a property right in the participating
7 utility.

8 (Source: P.A. 97-616, eff. 10-26-11; 97-646, eff. 12-30-11.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.